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February 23, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Suite TWA-325
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting
CC Docket No. 96-45, Federal-State Joint Board on Universal Service
CC Docket No. 98-171, 1998 Biennial Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, *et al.*

Dear Ms. Roman-Salas:

Pursuant to 47 C.F.R. § 1.1206(b), transmitted herewith are two (2) copies of a summary of the substance of an *ex parte* meeting in CC Docket No. 96-45, held yesterday. The meeting was requested and scheduled by Jack S. Zinman of the Common Carrier Bureau's Accounting Policy Division. This letter and the attached summary are submitted jointly by the undersigned; at Mr. Zinman's instructions, two copies of this letter and attached summary are also being filed in CC Docket No. 98-171, as the discussions are also relevant to the subject matter under consideration in that proceeding.

The meeting was attended by the following members of the Commission's staff: Mr. Zinman, and Scott K. Bergmann and James Lande, both of the Common Carrier Bureau's Industry Analysis Division (collectively, the "Commission"). The meeting was attended by the following representatives of parties who requested reconsideration of the July 1998 revisions to FCC Form 457, the Universal Service Worksheet (the "Worksheet"): Angela E. Giancarlo of the Personal Communications Industry Association, Inc., Gerard J. Duffy of Blooston, Mordkofsky, Jackson & Dickens (representing fifty-three telecommunications carriers), and Christine McLaughlin of Joyce & Jacobs, Attorneys at Law, L.L.P. (representing Metrocall, Inc.) (collectively, the "Parties").

A copy of this notice is also being sent to the Commission staff listed below.

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Thank you for your attention to this matter. If you have any questions concerning this matter, kindly contact the undersigned representatives of the Parties.

Respectfully submitted,

Angela E. Giancarlo (by CM)
Angela E. Giancarlo
Personal Communications Industry
Association, Inc. ("PCIA")
Counsel to PCIA

Gerard J. Duffy (by CM)
Gerard J. Duffy
Blooston, Mordkofsky, Jackson
& Dickens
Counsel to Fifty-three telecommunications companies

Christine McLaughlin
Christine McLaughlin
Joyce & Jacobs, Attys. at Law, L.L.P.
Counsel to Metrocall, Inc.

cc (all by hand):
Mr. Scott K Bergmann
Mr. Richard Cameron
Mr. James Lande
Ms. Lisa Zaina
Mr. Jack S. Zinman

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SUMMARY OF MEETING
February 23, 1999
CC Docket Nos. 96-45 and 98-171

On February 23, 1999, an *ex parte* meeting concerning petitions for reconsideration of the July 1998 version of FCC Form 457 (the Universal Service Worksheet or "Worksheet"), in the CC Docket No. 96-45, was held at the request of Jack S. Zinman of the Common Carrier Bureau's Accounting Policy Division.

The meeting was attended by the following members of the Commission's staff: Mr. Zinman, and Scott K. Bergmann and James Lande, both of the Common Carrier Bureau's Industry Analysis Division (collectively, the "Commission"). The meeting was attended by the following representatives of parties who had requested reconsideration of the July 1998 revisions to FCC Form 457, the Universal Service Worksheet (the "Worksheet"): Angela E. Giancarlo of the Personal Communications Industry Association, Inc., Gerard J. Duffy of Blooston, Mordkofsky, Jackson & Dickens (representing fifty-three telecommunications carriers), and Christine McLaughlin of Joyce & Jacobs, Attorneys at Law, L.L.P. (representing Metrocall, Inc.) (collectively, the "Parties").

The Commission questioned the Parties' contention that it is inequitable not to allow carriers who recoup Universal Service Fund ("USF") contributions through a "line item" surcharge to exclude those amounts from their gross revenues, while carriers who simply included the amounts of their USF contributions in their rates would be including the entirety of that increased rate in their revenues. The Parties responded that the Worksheet could retain a line for recovery of USF contributions, but simply not include the revenues from that line in "gross revenues" (in a manner similar to carriers' reporting of revenues from information services). The Parties further noted that the paging industry is highly competitive, and that simply covering USF contributions by an undifferentiated rate increase is generally not a practical option for many paging carriers in any event. Paging customers are sensitive to price, and with monthly rates that can be as low as $4.00, even a small rate increase will draw a negative reaction from customers.

The Commission responded by stating that, if the Commission exempted amounts charged to recover past USF contributions from gross revenues, carriers in a competitive industry would be more likely to try to treat charges as USF surcharges than as charges for services (thus reducing the amount of "gross revenues" on those carriers' Worksheets). The Parties pointed out that the Commission has enforcement authority over carriers; if the Commission believes that an individual carrier is under-reporting its gross revenues by mis-characterizing service revenues as a USF "pass-through" or "surcharge," the Commission can take enforcement action against that carrier. Similarly, the Parties further explained that if an individual carrier is misusing a USF surcharge, then that carrier may be answerable not only to the FCC, but to the Federal Trade Commission and State consumer protection agencies as well. In short, the Parties stated that any remedial action should be directed toward the "misbehaving" carrier, rather than by an across-the-board inflation of revenues for the entire telecommunications industry.

The Commission also faulted the cost estimates in the Parties' pleadings by noting that the each of the Parties assumed that the contribution factor would remain constant. The Commission prepared its own set of estimates to demonstrate its contention that the greater the amount of revenues in the contribution base, the lower the contribution factor applicable to each carrier's gross revenues (and thus the ultimate amount of each carrier's contribution) would be. A copy of the Commission's set of estimates is attached hereto as Attachment A. The Parties questioned the Commission's assumption that the USF program demand would remain constant, and requested permission to potentially respond further to the Commission's demonstration in the near future. The Commission responded that the amount of collections in a given year is not necessarily tied to projections of program demand.

It was further observed by one of the Parties that, assuming the validity of the Commission's estimates, new entrants would have an advantage over incumbents, since the new entrant would be contributing based on "gross revenues" that did not include amounts collected to recover previous USF payments (*i.e.*, a lower contribution base amount), multiplied by the lower contribution factor. The Commission responded that the FCC was aware that there would be "winners" and "losers" under any system assessing a fee based on past revenues, and that this is the balance it struck in the Report and Order.

Effects of Including Pass Through Charges in Contribution Base

Period 1
Number of Carriers: 10

Revenue per Carrier: $100

Total Industry Revenue: (10 x $100) = $1000

Program Demand: $100

Contribution Factor: $100 / $1000 = .10

Assessment per Carrier: (.10 Contribution Factor x $100 Revenue per Carrier) = $10

Period 2
Number of Carriers: 10

Revenue per Carrier: ($100 Service Revenue + $10 Pass Through Charge) = $110

Total Industry Revenue: (10 x $110) = $1100

Program Demand: $100

Contribution Factor: $100 / $1100 = .0909

Assessment per Carrier: (.0909 Contribution Factor x $110 Revenue per Carrier) = $9.999

Period 3
Number of Carriers: 10

Revenue per Carrier: ($100 Service Revenue + $10 Pass Through Charge) = $110

Total Industry Revenue: (10 x $110) = $1100

Program Demand: $100

Contribution Factor: $100 / $1100 = .0909

Assessment per Carrier: (.0909 Contribution Factor x $110 Revenue per Carrier) = $9.999